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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92032341
Party	Defendant MICHEL FARAH MICHEL FARAH ,
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Attachments	Reply in support MSJ 062207.pdf ( 3 pages )(17409 bytes )

UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

PRAMIL S.R.L. (ESPHARMA)	)	
	)	
Petitioner,	)	Cancellation No. 92032341
	)	Mark: OMIC PLUS
v.	)	Reg. No. 2,447,970
	)	
MICHEL FARAH	)	
	)	
Registrant.	)	
_____	)	

REGISTRANT’S REPLY IN SUPPORT OF  
MOTION FOR SUMMARY JUDGMENT

In its response to Registrant’s Motion for Summary Judgment, Petitioner makes no substantive response and merely attacks the motion as untimely. Because the motion is based upon collateral estoppel, upon a recent judgment of a district court unfavorable to the Petitioner, the motion is not untimely and should be granted.

Petitioner’s sole objection to the motion for summary judgment is the assertion that the motion is “untimely.” However, TBMP 528.02 specifies that “[t]he Board will generally not consider a motion for summary judgment filed after the first testimony period commences *unless (1) it involves matters of res judicata (claim preclusion) or collateral estoppel (issue preclusion).*” (Emphasis added). “Although the Board generally will not consider a motion for summary judgment filed after the first trial period commences, one exception to this practice is a motion involving a matter of res judicata or collateral estoppel.” *Black Box Corporation of Pennsylvania and BB Technologies, Inc. v. Betterbox Communications Limited*, 2003 TTAB LEXIS 581, \*3 n.6 (TTAB 2003), citing *Lukens, Inc. v. Vesper Corp.*, 1 USPQ2d 1299, 1300 n.2 (TTAB 1986),

*aff'd, Vesper Corp. v. Lukens, Inc.*, 831 F.2d 306 (Fed. Cir. 1987); *see also Baron Philippe De Rothschild S.A. and Societe Civile du Chateau Lafite Rothschild v. U.S. Vision, Inc.*, 2003 TTAB LEXIS 527 at \*2 (TTAB 2003); *Sealtite Building Fasteners v. Larry Joseph Bogatz d/b/a B&B Hardware and B&B Hardware, Inc.*, 2002 TTAB LEXIS 425 at \*5 n.7 (TTAB 2002).

Registrant's Motion for Summary Judgment in fact sets forth collateral estoppel as the primary basis for entry of judgment and the dismissal of this cancellation. Furthermore, the District Court's Order Granting Permanent Injunction Against Defendant Pramil S.R.L. (Esapharma), which sets forth the preclusive ruling upon which the motion for summary judgment is based, was issued on May 23, 2007. Thus, it would have been impossible for Farah to file this motion prior to the testimony period. Petitioner does not explain how a motion based upon a court decision made just a few weeks ago is untimely.

Further, the consideration of motions like the Registrant's motion for summary judgment is compelled by the need to avoid TTAB decisions at odds with the controlling authority of the federal courts and to preclude multiple proceedings to resolve contradictory rulings between the TTAB and the federal courts. Thus, there is good reason for the recognized exception set forth in TBMP 528.02 permitting consideration of motions for summary judgment filed after the testimony period but based upon res judicata or collateral estoppel.

Because the Petitioner raises no other issue contesting the granting of summary judgment in favor of Registrant, the motion for summary judgment should be granted promptly, and this proceeding should be dismissed.

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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing Registrant's Reply  
in Support of Motion for Summary Judgment was sent by first class mail with proper  
postage affixed, the 22nd day of June, 2007, to the following counsel for petitioner:

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